
Human Services Committee

ESB 5519

Brief Description: Reforming competency evaluation and restoration procedures.

Sponsors: Senators Hargrove, Stevens and Regala.

Brief Summary of Engrossed Bill

- Narrows the scope of the statutory provision regarding initiation of competency evaluations and restoration to only those cases where the competency of a defendant is at issue and creates another statutory provision regarding cases where a defendant has pleaded not guilty by reason of insanity or asserted a defense of diminished capacity.
- Requires that only one expert or professional person evaluate the competency of the defendant, rather than two, and that the competency evaluation to be performed by or in consultation with a developmental disabilities professional if it appears that the characteristics of developmental disability may be a significant factor in the defendant's ability to participate in the criminal proceeding.
- Requires the court to order that a competency evaluation shall take place in the jail or detention facility where the defendant is being held and permits a defendant to be evaluated at a state hospital facility only upon determination of the evaluator.
- Requires that the report of a competency evaluation of a defendant held in jail shall be completed within 21 days from the time that the Department of Social and Health Services receives the court's order, the charging documents, certification of probable cause, police report, and a summary of the defendant's criminal history.
- Removes the requirement that a professional evaluating a defendant for competency provide an opinion as to whether the defendant is a substantial danger to other persons or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security.
- Prohibits the court from ordering a second 90-day period of competency restoration for a felony offense if such period of time would exceed the top of the standard sentence range for which the defendant is charged unless further competency restoration treatment is in the public interest.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Prohibits the court from ordering a third period of competency restoration for a felony - for up to six months - if the allegations charged against the defendant do not include one or more charges which are considered "serious offenses."
- Permits the court to detain a defendant in custody for 12 hours to permit an evaluation by a designated mental health professional if a defendant is charged with a nonfelony which is not serious.
- Requires the jail or detention center, upon receipt of an order requiring the transfer of a defendant to a state hospital or other medical facility, to provide all medical information in its possession to the DSHS within three days.
- Permits the court to conduct a show cause hearing if the DSHS fails to conduct or complete a competency evaluation within the time limits set forth in statute; if no good cause exists for failure to meet statutory deadlines, the court may order the DSHS to reimburse the jail for any excess days at a rate of \$90 per day.
- Requires the DSHS to report annually to the Legislature, beginning October 1, 2010, regarding the waiting period for competency evaluations and competency restoration treatment during the previous state fiscal year.
- Makes technical corrections to statutory references.

Hearing Date: 3/23/09

Staff: Linda Merelle (786-7092)

Background:

Competency Evaluations.

A criminal defendant is incompetent to stand trial when, due to a mental disorder, the defendant lacks the capacity to understand the nature of the criminal proceedings or lacks the ability to rationally assist in his or her defense. A competency evaluation is required whenever it appears that a criminal defendant may be incompetent to stand trial. If the evaluator finds that the defendant is incompetent, and the case is a felony or a serious misdemeanor, the court must order the defendant to undergo competency restoration treatment. State law does not specify a time limit for completion of a competency evaluation. There are three stages during which a competency evaluation may be delayed:

- *Initial Custody:* the time from which a defendant is taken into custody until the court orders a competency evaluation of the defendant.
- *After Court Orders Competency Evaluation:* the time period after the court issues an order for evaluation until the DSHS receives a copy of the court order and the pertinent case documents.
- *After Case Documents Provided to the DSHS:* the time period it takes to conduct the competency evaluation and complete an evaluation report.

The court may order the competency evaluation to take place at the state hospital or at the jail (or detention center) or in the community. When an evaluation takes place at the jail or in the

community, it is considered to be on an "outpatient" basis. Evaluations at a state hospital facility are on an "inpatient" basis. The statutory provision regarding competency evaluation includes an evaluation of the future dangerousness of the offender, and may include an evaluation regarding whether the defendant had the capacity to have a particular state of mind which is an element of the offense charged or whether the defendant was insane at the time of the act which is charged in the offense.

Upon a finding that a defendant is incompetent, the criminal case is stayed during all competency proceedings. For felony offenses, the court may order two 90-day periods to restore the defendant's competency and may order that the defendant undergo competency restoration for a further period of up to six months. For a nonfelony offense that is a serious offense, the court shall order that the defendant be held in a secure mental health facility for no more than 14 days or that the defendant be placed on conditional release for up to 90 days, or any combination of these two options. For a nonfelony offense that is not a serious offense, the court may stay or dismiss proceedings and detain the defendant for a sufficient time to allow a designated mental health professional to evaluate the defendant for a civil commitment.

If the defendant cannot be restored to competency within the time periods prescribed by law, the criminal case must be dismissed without prejudice. If the offense charged was a felony or misdemeanor or gross misdemeanor which is a "serious offense," the defendant must be transported to the state hospital for civil commitment proceedings. The state may file a petition for a civil commitment for a period of 90 days for a misdemeanor charge or 180 days for a felony charge which may be renewed at successive civil commitment hearings.

Summary of Bill:

Evaluations.

Evaluations to determine competency and further to pleas of not guilty or of diminished capacity are placed in separate provisions. Only one expert or professional is required to perform an evaluation. If there is an indication that the defendant has a developmental disability, the evaluation must be performed by or in consultation with a developmental disabilities professional.

The competency evaluation of a defendant held in jail must be completed within 21 days from the time that the DSHS receives the court's order, the charging documents, the certification of probable cause, the police report, and a summary of the defendant's criminal history.

The evaluator is no longer required to provide an opinion whether the defendant is a substantial danger to other persons or presents a substantial likelihood of committing criminal acts which jeopardize the public safety or security.

Competency Restoration.

A court may not order a second 90-day period of competency restoration for a felony offense if such period of time would exceed the high end of the standard range for the offense charged. The court may not order a third period of restoration - up to six months - if the felony offense is not a "serious offense." A "serious offense" includes a violent offense, sex offense, serious

traffic offense, a domestic violent offense, and others. For a defendant charged with a nonfelony offense that is not serious, the court may order an evaluation by a designated mental health professional and hold the defendant in custody for up to 12 hours in order to complete the evaluation.

Medical Information.

The jail or detention center must, upon receipt of an order requiring the transfer of a defendant to a state hospital or other medical facility, provide all medical information in its possession to the DSHS within three days.

Show Cause Hearings.

If the DSHS fails to conduct or complete a competency evaluation within the time limits set forth in the statute, the court may conduct a show cause hearing. If no good cause is found to exist for the failure to meet the statutory deadlines, the court may order the DSHS to reimburse the jail for any excess days beyond the statutory limits at a rate of \$90 per day.

Report to Legislature.

The DSHS must report annually to the Legislature beginning October 1, 2010, regarding the waiting period for competency evaluations and competency restoration treatment during the previous fiscal year. The report must include:

- the number of competency evaluation referrals received, grouped by state hospital;
- the average waiting period for competency evaluations, presented on a monthly basis;
- the average waiting period for competency evaluations, presented on an annual basis, and itemized by county;
- the average waiting period for inpatient competency restoration, presented on a monthly basis, grouped by state hospital;
- the number of competency restoration treatment referrals received on an annual basis, grouped by state hospital;
- the number of probable cause hearings held during the reporting period for failure to complete an evaluation within the statutory time limits, grouped by state hospital; and
- a description of a corrective action plan if the data indicates that the DSHS has failed to comply with the statutory time limits.

Technical Corrections.

Technical corrections to statutory references are made in chapters 10.77, 71.05, and 71.09 RCWs.

Appropriation: None.

Fiscal Note: Requested on March 18, 2009.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.